

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10849 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SULEIMAN AHMED D IBRAHIM, THROPAH HEMANTBHAI H. HOJIWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10849 of 1994
MR RS SANJANWALA for Petitioner No. 1
MR PR ABICHANDANI AGP for Respondent No. 1-3
MR AMIT V THAKKAR for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 18/02/2005

ORAL JUDGEMENT

#. In this petition under Articles 226 and 227 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Mamlatdar and ALT (Tenancy), Choryasi Prant dated 6.9.93 passed in Tenancy Case No.42/93(84C) as confirmed by the Deputy Collector, Choryasi Prant, Surat by its judgment and order dated 1.4.1994 passed in Tenancy Appeal No.71/93 by which the transaction in favour of the petitioner came to be declared as invalid and in breach of Section 63 of the Bombay Tenancy Act with regard to the transfer of the Agricultural land bearing block no.143 situated at Village Bhatia, Taluka Choryasi, Surat to the non-agricultural land without obtaining the permission from the competent authority.

#. Shri S.S.Sanjanwala, learned advocate appearing on behalf of the petitioner submitted that similar type of orders were passed by the Mamlatdar & ALT (Tenancy) Choryasi Prant and confirmed by the Deputy Collector with regard to the adjacent land and the same were challenged before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by judgment and order dated 29.2.1996 allowed the revision application by holding that "exemption under Section 64C is valid to purchase of agricultural land by Co-operative Society". Mr.Sanjanwal has further submitted that the judgment and order passed by the Gujarat Revenue Tribunal in Revision Application Nos.TEN B.S.229 of 1993 and other allied matters came to be challenged by the State Government by way of Special Civil Application No.12459 of 2003 and allied matters, which came to be dismissed by the learned Single Judge of this court (Coram : K.A.Puj, J.) and against which even the Letters Patent Appeals were filed and the same also came to be dismissed. It is, therefore, submitted that the impugned orders passed by the Mamlatdar & ALT (Tenancy), Choryasi Prant, Surat as well as the order passed by the Deputy Collector are required to be quashed and set aside. It is submitted that instead of filing revision application before the Gujarat Revenue Tribunal the petitioner has preferred present Special Civil Application straightaway before this court challenging the aforesaid two orders and, therefore, requested to allow the present Special Civil Application.

#. Mr.P.R.Abichandani, learned AGP has submitted that in fact against the order passed by the Deputy Collector the petitioner was required to file revision application before the Gujarat Revenue Tribunal and instead of that he has preferred the present Special Civil application and, therefore, requested to dismiss the Special Civil Application. However, Mr.Abichandani is not in a position to controvert that this question is covered by

the judgment of this court rendered in case of Satate of Gujarat v. Shree Sachin Udyognagar Sahkari Mandli Ltd. reported in 2004(1) GLR 381.

#. It is true that against the order passed by the Deputy Collector, the petitioner was required to file revision application before the Gujarat Revenue Tribunal. However, in view of the fact that this petition is filed in the year 1994 and this court has entertained the present Special Civil Application, it will not be proper at this stage to dismiss the Special Civil Application on the ground that the petitioner has an alternative remedy available by way of revision application before the Gujarat Revenue Tribunal and to direct the petitioner to approach the Gujarat Revenue Tribunal, at this stage.

#. Under the circumstances, present Special Civil Application is required to be decided on merits.

#. It is not in dispute that the case of the petitioner is identical to that of the other persons, who had approached the Gujarat Revenue Tribunal by way of Revision Application No.TEN B.S.229 of 1993 and other cognate matters. In fact, the land of the petitioner is also adjacent to the lands of those persons. In case of Shree Sachin Udyognagar Sahkari Mandli Ltd. (supra) the learned Single Judge held in para 31 that "the Tribunal has rightly taken the decision that the fact that Sec.64A refers to transactions by or in favour of a Co-operative Society makes it abundantly clear that the legislature has accorded exemption to a Co-operative Society, whether the Co-operative Society happens to be a vendor or vendee in respect of agricultural lands".

#. After giving the aforesaid finding, the learned Single Judge of this court affirmed the view of the Gujarat Revenue Tribunal to the effect that the transaction in question is just under the provisions of Section 63A of the Bombay Tenancy & Agricultural Lands Act, 1948. Considering the judgment of this court in case of Shree Sachin Udyognagar Sahakari Mandli Ltd. (supra) the present Special Civil Application is allowed. The order passed by the Deputy Collector, Choryasi Prant, Surat dated 11.4.1994 passed in Tenancy Appeal No.74/93 dismissing the appeal and confirming the order passed by the Mamlatdar and ALT (Tenancy), Choryasi Prant, Surat dated 6.9.1993 passed in Tenancy Case No.42/93(84C) is hereby quashed and set aside. Consequently, the order passed by the Mamlatdar & ALT, Choryasi Prant, Surat passed in Tenancy Case No.42/86 is also hereby quashed and set aside. Rule is made absolute to the aforesaid

extent with no order as to costs.

(M.R.Shah, J.)

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